

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

VINCENT EDWARD LILLY, §
§
Petitioner, §
§
v. §
§
LORIE DAVIS, Director, §
Texas Department of Criminal Justice, §
Correctional Institutions Division, §
§
Respondent. §
§

Civil No. 7:17-CV-095-O

**ORDER ACCEPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

After making an independent review of the pleadings, files, and records in this case, and of the Findings, Conclusions, and Recommendation of the United States Magistrate Judge, I am of the opinion that the findings of fact, conclusions of law, and reasons for dismissal set forth in the Magistrate Judge's Recommendation are correct and they are hereby adopted and incorporated by reference as the Findings of the Court.

The Magistrate Judge recommends that this action be dismissed as barred by the one-year statute of limitations set forth under 28 U.S.C. § 2244(d). Before entering a *sua sponte* dismissal on limitations grounds, “a court must accord the parties fair notice and an opportunity to present their positions.” *Day v. McDonough*, 547 U.S. 198, 210 (2006). The Court’s habeas petition form that Petitioner used in the instant case recites the statute of limitations set forth in 28 U.S.C. § 2244(d). *See* Petition, ECF No. 1 at 10 n.1. In that pleading, Petitioner stated his opposition to the limitations issue. *Id.* Petitioner also filed a “Declaration for Explanation for 20 Year Delay” in which he elaborated on his reasons for delay in filing the instant petition. *See* ECF No. 6. Additionally, the

Magistrate Judge's Recommendation provided Petitioner with notice and an opportunity to respond to the possible dismissal of this case as time-barred. *See Magouirk v. Phillips*, 144 F.3d 348, 359 (5th Cir. 1998) (*sua sponte* invocation of affirmative defense in Magistrate Judge's Recommendation provided petitioner a sufficient opportunity to respond and therefore satisfied due process). Petitioner was afforded ample opportunity to oppose the application of the statute of limitations. He did not file objections to the Magistrate Judge's Recommendation.

For the foregoing reasons, the petition for writ of habeas corpus is **DISMISSED** as **TIME-BARRED**.

SO ORDERED this **4th** day of **August, 2017**.



Reed O'Connor
UNITED STATES DISTRICT JUDGE